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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/487,027 01/19/00 DI MARIO

F 5333USA

EXAMINER

QM12/0808

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HARMON, C	
ART UNIT	PAPER NUMBER

3721  
DATE MAILED:

4  
08/08/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/487,027

Applicant(s)

DI MARIO ET AL.

Examiner

Christopher R Harmon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 January 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 10-34 and 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 35 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims 1-37 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 and 35-36, drawn to a method and apparatus for packaging goods in a box comprising a box erector and elevator lift, classified in class 53, subclass 458.
- II. Claims 10-34, drawn to a method and apparatus for packaging goods in an open-bottomed container comprising an elevator lift, classified in class 53, subclass 242.
- III. Claim 37, drawn to a method for delivering goods, classified in class 414, subclass 799.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because along with the elevator lift there is a box erector for erecting the box. The subcombination has separate utility such as the claims of Group II do not require the box erector of Group I.

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Inventions I-II, and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case Group III requires transporting goods in open-bottomed containers on a palette.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I and II is not required for Group III, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with John O'Toole on 7/23/01 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9 and 35-36. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10-34 and 37 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 35-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases "the elevator lift apparatus" (claim 35, line 5-6) and "the goods" (claim 35, line 7) lack antecedent basis.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5 and 35-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Barbulesco et al. (US 5,115,625).

Barbulesco et al. disclose an apparatus and method for packing objects in boxes comprising case magazine 20; controller 70; suction cup 21 for engaging a folded box blank 23; box erecting members 26-28; elevator 30 which loads product 10 into the erected box 23b from below (see figure 2). After the flaps of a box are folded about a product 10 the flaps are then sealed by either glue or pressure sensitive tape (see column 8, lines 19-22) at step 5 of figure 2 of the box erecting/loading

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apparatus. Elevator 30 accepts product 10 at a loading/conveying plane below that of the box erector, which then simultaneously loads the product 10 into opened bottom box 23 in accordance with box erecting members 26-28 before being moved together; see column 9, line 22 - column 10, line 7. The box 23 with product 10 inserted is then transferred along conveying surface 56 which cooperates with both major and minor flap folding devices 44, 50, 51, 60, 61, etc. to effectively fold four upper and four lower flaps; see figure 1.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barbulesco et al. (US 5,115,625) in view of Reinfeld et al. (US 4,550,549).

Barbulesco et al. do not specifically disclose a labeling apparatus operatively connected to the finishing apparatus. Reinfeld et al. teach a labeling apparatus in the apparatus and method of packing articles operating on completed containers 52 along discharge conveyor 80; see figure 14, column 5, lines 52-56. It would have been obvious of one of ordinary skill in the art to include the use of a labeling apparatus as taught by Reinfeld et al. in the invention of Barbulesco et al. in order to mark a package as desired.

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Regarding the limitation of a first feed conveyor of claim 7, Barbulesco et al. disclose a system requiring simultaneous box erection and insertion of product 10 by elevator 30. Elevator 30 reciprocates between a lower product feed position and a higher box inserting position. Products 10 are supplied to elevator 30 at its lower position by a means not specifically described, however, due to the speed of the fully automated system it is concluded that a conveyor is used to supply the elevator operatively sequenced with box erecting and product elevating operations. Alternatively, Reinfeld et al. teaches product feed conveyor 41 (figure 17). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a first product conveyor in the invention of Barbulesco et al. as taught by Reinfeld et al. for transferring the product to an elevator.

Barbulesco et al. disclose the use of a second conveyor 91 defining a plane (along main slide plate 56) to transfer the boxes 23 through a sealing station 5; see figures 2, 6, and 13.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher R Harmon whose telephone number is 703-308-8643. The examiner can normally be reached on Monday-Thursday from 9-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on 703-308-1789. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-305-3579 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

ch  
July 25, 2001

  
Stephen F. Gerrity  
Primary Examiner  
Acting SPE 3721